



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2010 EXTRAORDINARY SESSION

HOUSE BILL NO. 5

WEDNESDAY, MAY 26, 2010

The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to unemployment insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔ Section 1. KRS 341.030 is amended to read as follows:

2 (1) As used in this chapter, unless the context clearly requires otherwise, and except as
3 provided in subsections (2) to (7) of this section, "wages" means all remuneration
4 for services, including commissions, bonuses, and, except for services performed in
5 agriculture and domestic employment, the cash value of all remuneration in any
6 medium other than cash. The reasonable cash value of remuneration in any medium
7 other than cash shall be estimated and determined in accordance with rules
8 prescribed by the commission.

9 (2) Amounts paid to traveling salesmen or other workers as allowance or
10 reimbursement for traveling or other expenses, incurred on the business of the
11 employing unit, constitute wages only to the extent of the excess of the amounts
12 over the expenses actually incurred and accounted for by the worker to his
13 employer; provided, however, that the cash value of meals and lodging when
14 furnished to the worker for the convenience of the employer shall not constitute
15 wages.

16 (3) For purposes of this chapter, the term "wages" includes tips which are:

- 17 (a) Received while performing services which constitute employment; and
18 (b) Included in a written statement furnished to the employer pursuant to Section
19 6053(a) of the Internal Revenue Code; and
20 (c) Shall be treated as having been paid by the employing unit.

21 (4) "Wages" does not include the amount of any payment made to, or on behalf of, a
22 worker under a plan or system established by an employing unit that makes
23 provision for its workers generally or for a class of its workers, including any
24 amount paid by an employing unit for insurance or annuities, or into a fund, to
25 provide for any such payment, on account of:

- 1 (a) Retirement;
- 2 (b) Sickness or accident disability but, in the case of payments made to an
3 employee or any of his dependents, this subsection shall exclude from the
4 term "wages" only payments which are received under a workers'
5 compensation law;
- 6 (c) Medical and hospitalization expenses in connection with accident or sickness
7 disability; or
- 8 (d) Death, if the worker has not:
 - 9 1. The option to receive, instead of provision for the death benefit, any part
10 of the payment, or if the death benefit is insured, any part of the
11 premiums or contributions to premiums paid by his employing unit; and
 - 12 2. The right, under the provisions of the plan or system or policy of
13 insurance providing for the death benefit, to assign the benefit, or to
14 receive a cash consideration in lieu of it either upon his withdrawal from
15 the plan or system providing for the benefit or upon termination of the
16 plan or system or policy of insurance or of his employment with his
17 employing unit.
- 18 (5) "Wages" does not include any payment on account of sickness or accident
19 disability, or medical or hospitalization expenses in connection with sickness or
20 accident disability, made by an employer to, or on behalf of, an employee after the
21 expiration of six (6) calendar months following the last calendar month in which the
22 employee worked for the employer.
- 23 (6) "Wages" does not include the amount of any payment made by an employing unit
24 without deduction from the remuneration of the worker of the tax imposed under
25 Section 3101 of the Internal Revenue Code or any payment required from an
26 employer under a state unemployment compensation law with respect to
27 remuneration paid to an employee for domestic service in a private home of the

1 employer or for agricultural labor.

- 2 (7) "Wages" does not, for the purposes of KRS 341.260 to 341.310, include that part of
 3 remuneration which, after wages equal to eight thousand dollars (\$8,000) have been
 4 paid in a calendar year to a worker by a subject employer or his predecessor with
 5 respect to covered employment during any calendar year, is paid to the worker by
 6 the subject employer during the calendar year unless that part of the wages is
 7 subject to a tax under a federal law, imposing a tax against which credit may be
 8 taken for contributions required to be paid into a state unemployment fund. On
 9 January 1, 2012, the amount of eight thousand dollars (\$8,000) in this subsection
 10 shall increase to nine thousand dollars (\$9,000), which shall increase by an
 11 additional three hundred dollars (\$300) on January 1 of each subsequent year to
 12 2022, not to exceed twelve thousand dollars (\$12,000). For the purpose of this
 13 subsection, the term "covered employment" shall include service constituting
 14 covered employment under any unemployment compensation law of another state.

15 ➔Section 2. KRS 341.090 is amended to read as follows:

16 As used in this chapter, unless the context clearly requires otherwise:

- 17 (1) "Base period" means the first four (4) of the last five (5) completed calendar
 18 quarters immediately preceding the first day of a worker's benefit year. However, if
 19 an individual lacks sufficient base-period wages because of a job-related injury, and
 20 he has received or was eligible to receive workers' compensation, upon written
 21 application by the claimant an extended base period will be substituted for the
 22 current base period on a quarter-by-quarter basis as needed to establish a valid claim
 23 or to increase the benefit rate of a claim if:

24 (a) The individual did not earn wages because of a job-related injury for at least
 25 seven (7) weeks of each base period quarter to be substituted by an extended
 26 base period quarter;

27 (b) No later than one (1) month prior to the expiration of workers' compensation

benefits, the employer or carrier shall inform, orally and in writing, all recipients of their potential eligibility for unemployment insurance, and also provide a statement verifying the individual's eligibility for workers' compensation; and

(c) A claim for unemployment insurance compensation is filed no later than the fourth week of unemployment after the end of the period of injury compensated or eligible to be compensated by workers' compensation.

(2) "Extended base period" means the four (4) quarters prior to the claimant's base period. These four (4) quarters may be substituted for base-period quarters on a quarter-for-quarter basis in order to establish a valid claim or increase the benefit rate of a valid claim regardless of whether the wages have been used to establish a prior claim, except wages transferred to or from another state under a combined wage agreement will be excluded if used in a prior claim. Benefits paid on the basis of an extended base period, which would not otherwise be payable, shall be charged to the pooled account if the chargeable employer is a contributing employer. If the chargeable employer is a reimbursing employer, benefits shall be billed to his reimbursing account.

(3) "Benefit year" for any worker means the fifty-two (52) week period beginning with the first day of the week with respect to which he first requests a determination which establishes his status as a fully insured worker after the termination of his last preceding benefit year, if any, except that the last preceding benefit year shall be a fifty-three (53) week period if fifty-two (52) weeks would result in the overlapping of any calendar quarter of the base period of the new benefit year with the same calendar quarter of the base period of the previous benefit year. As used in this subsection, a worker shall be considered as having insured status, without regard to any other provision of this chapter, if at the time of his request he has satisfied the conditions required under ~~subsection (5) of~~ KRS 341.350(6).

1 (4) "Base-period wages" means the wages paid to a worker during his base period by
 2 subject employers for covered employment. The secretary, upon request of the
 3 employee, with respect to this subsection, shall consider wages payable to mean
 4 wages paid in order to prevent inequities caused by employer failure to meet a
 5 regularly scheduled payday. Lump-sum payments deemed to be wages under this
 6 chapter shall be reallocated to periods covered by the payments.

7 ➔ Section 3. KRS 341.096 is amended to read as follows:

8 As used in this chapter, unless the context clearly requires otherwise:

9 (1) "Rate of insured unemployment" means the percentage derived by dividing:

10 (a) The~~[-average]~~ weekly average number of weeks claimed in claims
 11 filed~~[workers filing claims]~~ for regular benefits (not seasonally adjusted) in
 12 this state for weeks of unemployment with respect to the most recent 13-
 13 consecutive-week period, as determined by the secretary on the basis of his
 14 report to the United States Secretary of Labor, by

15 (b) The average monthly employment covered under this chapter for the first four
 16 (4) of the most recent six (6) completed calendar quarters ending before the
 17 end of such 13-week period. Such computations shall be made by the
 18 secretary, in accordance with regulations prescribed by the United States
 19 Secretary of Labor.

20 (2) "Regular benefits" means benefits payable to a worker under this chapter or under
 21 an unemployment compensation law of any other state (including benefits payable
 22 to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. ch. 85)
 23 other than extended benefits and additional benefits.

24 (3) "Extended benefits" means benefits (including benefits payable to federal civilian
 25 employees and to ex-servicemen pursuant to 5 U.S.C. ch. 85) payable to a worker
 26 under the provisions of KRS 341.700 to 341.740 for weeks of unemployment in his
 27 eligibility period.

1 (4) "Additional benefits" means benefits payable to exhaustees by reason of conditions
 2 of high unemployment or by reason of other special factors under the provisions of
 3 any state law.

4 (5) "Eligibility period" of a worker means the period consisting of the weeks in his
 5 benefit year which begin in an extended benefit period and, if his benefit year ends
 6 within such extended benefit period, any weeks thereafter which begin in such
 7 period.

8 (6) "Exhaustee" means a worker who, with respect to any week of unemployment in his
 9 eligibility period:

10 (a) Has received, prior to such week, all of the regular benefits that were available
 11 to him under this chapter or any other state law (including dependents'
 12 allowances and benefits payable to federal civilian employees and ex-
 13 servicemen under 5 U.S.C. ch. 85) in his current benefit year that includes
 14 such week; provided, that, for the purposes of this paragraph, an individual
 15 shall be deemed to have received all of the regular benefits that were available
 16 to him although, as a result of a pending appeal with respect to wages and/or
 17 employment that were not considered in the original monetary determination
 18 in his benefit year, he may subsequently be determined to be entitled to added
 19 regular benefits; or

20 (b) His benefit year having expired prior to such week, has no, or insufficient,
 21 wages and/or employment on the basis of which he could establish a new
 22 benefit year that would include such week; and

23 (c) Has no right to unemployment benefits or allowances, as the case may be,
 24 under the Railroad Unemployment Insurance Act or under such other federal
 25 laws as are specified in regulations issued by the United States Secretary of
 26 Labor; and has not received and is not seeking unemployment benefits under
 27 the unemployment compensation law of Canada; but if the individual is

1 seeking such benefits and the appropriate agency finally determines that the
 2 individual is not entitled to benefits under such law, the individual shall be
 3 considered an exhaustee if the other provisions of this definition are met.

4 ➔Section 4. KRS 341.270 is amended to read as follows:

5 (1) Except as otherwise provided in this section, each employer's contribution rate shall
 6 be three percent (3%). Effective for employers who become subject to this chapter
 7 on or after January 1, 1999, except as otherwise provided in this section, each
 8 employer's contribution rate shall be two and seven-tenths percent (2.7%).

9 (2) Except as otherwise provided in this section, no subject employer's contribution rate
 10 shall be less than two and seven-tenths percent (2.7%), unless he has been an
 11 employer subject to the provisions of this chapter for twelve (12) consecutive
 12 calendar quarters ended as of the computation date. In any calendar year in which
 13 the rate schedule prescribed in paragraph (3)(a) of this section is in effect, no
 14 subject employer who was assigned an entry rate of three percent (3.0%) under the
 15 provisions of subsection (1) of this section prior to January 1, 1999, shall have a
 16 contribution rate less than two and eight hundred fifty-seven thousandths percent
 17 (2.857%), unless subject to this chapter for the minimum time period specified
 18 above.

19 (3) For the calendar year 2001 and each calendar year thereafter, employer contribution
 20 rates shall be determined in accordance with "Table A" set out in subsection (4) of
 21 this section. For each calendar year, the secretary shall determine the rate schedule
 22 to be in effect based upon the "trust fund balance" as of September 30~~December~~
 23 ~~31~~ of the preceding year. If the "trust fund balance":

24 (a) Equals or exceeds one and eighteen hundredths percent (1.18%) of the total
 25 wages paid in covered employment in the state during the state fiscal year
 26 ended as of June 30 of that year, the rates listed in the "Trust Fund Adequacy
 27 Rates" schedule of "Table A" shall be in effect.

- 1 (b) Equals or exceeds five hundred million dollars (\$500,000,000)~~[three hundred~~
 2 ~~fifty million dollars (\$350,000,000)]~~ but is less than the amount required to
 3 effectuate the "Trust Fund Adequacy Rates" schedule as provided in
 4 paragraph (a) of this subsection, the rates listed in "Schedule A" of "Table A"
 5 shall be in effect.
- 6 (c) Equals or exceeds three hundred fifty million dollars (\$350,000,000)~~[two~~
 7 ~~hundred seventy five million dollars (\$275,000,000)]~~ but is less than five
 8 hundred million dollars (\$500,000,000)~~[three hundred fifty million dollars~~
 9 ~~(\$350,000,000)]~~, the rates listed in "Schedule B" of "Table A" shall be in
 10 effect.
- 11 (d) Equals or exceeds two hundred fifty million dollars (\$250,000,000) but is less
 12 than three hundred fifty million dollars (\$350,000,000)~~[two hundred seventy~~
 13 ~~five million dollars (\$275,000,000)]~~, the rates listed in "Schedule C" of "Table
 14 A" shall be in effect.
- 15 (e) Equals or exceeds one hundred fifty million dollars (\$150,000,000) but is less
 16 than two hundred fifty million dollars (\$250,000,000), the rates listed in
 17 "Schedule D" of "Table A" shall be in effect.
- 18 (f) Is less than one hundred fifty million dollars (\$150,000,000), the rates listed in
 19 "Schedule E" of "Table A" shall be in effect.
- 20 (4) For the calendar year 1982 and each calendar year thereafter, contribution rates shall
 21 be determined upon the basis of an individual employer's reserve ratio as of the
 22 computation date and the schedule of rates established under subsection (3) of this
 23 section. Except as otherwise provided in this section, the contribution rate for each
 24 subject employer for the calendar year immediately following the computation date
 25 shall be the rate in that "Schedule" of "Table A," as set out below, effective with
 26 respect to the calendar year, which appears on the same line as his reserve ratio as
 27 shown in the "Employer Reserve Ratio" column of the same table.

TABLE A
Rate Schedule

3	Employer Trust	A	B	C	D	E	
4	Reserve Fund						
5	Ratio Adequacy						
6	Rates						
7	8.0% and						
8	over	0.000%	0.30%	0.40%	0.50%	0.60%	1.00%
9	7.0% but						
10	under 8.0%	0.000%	0.40%	0.50%	0.60%	0.80%	1.05%
11	6.0% but						
12	under 7.0%	0.008%	0.50%	0.60%	0.70%	0.90%	1.10%
13	5.0% but						
14	under 6.0%	0.208%	0.70%	0.80%	1.00%	1.20%	1.40%
15	4.6% but						
16	under 5.0%	0.508%	1.00%	1.20%	1.40%	1.60%	1.80%
17	4.2% but						
18	under 4.6%	0.808%	1.30%	1.50%	1.80%	2.10%	2.30%
19	3.9% but						
20	under 4.2%	1.008%	1.50%	1.70%	2.20%	2.40%	2.70%
21	3.6% but						
22	under 3.9%	1.308%	1.80%	1.80%	2.40%	2.60%	3.00%
23	3.2% but						
24	under 3.6%	1.508%	2.00%	2.10%	2.50%	2.70%	3.10%
25	2.7% but						
26	under 3.2%	1.608%	2.10%	2.30%	2.60%	2.80%	3.20%
27	2.0% but						

1	under 2.7%	1.708%	2.20%	2.50%	2.70%	2.90%	3.30%
2	1.3% but						
3	under 2.0%	1.808%	2.30%	2.60%	2.80%	3.00%	3.40%
4	0.0% but						
5	under 1.3%	1.908%	2.40%	2.70%	2.90%	3.10%	3.50%
6	-0.5% but						
7	under -0.0%	6.500%	6.50%	6.75%	7.00%	7.25%	7.50%
8	-1.0% but						
9	under -0.5%	6.750%	6.75%	7.00%	7.25%	7.50%	7.75%
10	-1.5% but						
11	under -1.0%	7.000%	7.00%	7.25%	7.50%	7.75%	8.00%
12	-2.0% but						
13	under -1.5%	7.250%	7.25%	7.50%	7.75%	8.00%	8.25%
14	-3.0% but						
15	under -2.0%	7.500%	7.50%	7.75%	8.00%	8.25%	8.50%
16	-4.0% but						
17	under -3.0%	7.750%	7.75%	8.00%	8.25%	8.50%	8.75%
18	-6.0% but						
19	under -4.0%	8.250%	8.25%	8.50%	8.75%	9.00%	9.25%
20	-8.0% but						
21	under -6.0%	8.500%	8.50%	8.75%	9.00%	9.25%	9.50%
22	Less						
23	than -8.0%.	9.000%	9.00%	9.25%	9.50%	9.75%	10.00%

(5) As used in this section and elsewhere in this chapter, unless the context clearly requires otherwise:

(a) "Trust fund balance" means the amount of money in the unemployment insurance fund, less any unpaid advances made to the state under Section 1201

of the Social Security Act. In determining the amount in the fund as of a given date all money received by the Office of Employment and Training, Department of Workforce Investment, on that date shall be considered as being in the fund on that date;

(b) "Total wages" means all remuneration for services, as defined in KRS 341.030(1) to (7), paid by subject employers;

(c) An employer's "reserve ratio" means the percentage ratio of his reserve account balance as of the computation date to his taxable payrolls for the twelve (12) consecutive calendar quarters ended as of June 30~~[September 30]~~ immediately preceding the computation date;

(d) For the purposes of this section, an employer's "reserve account balance" means the amount of contributions credited to his reserve account as of the computation date, less the benefit charges through June 30~~[September 30]~~ immediately preceding the computation date. If benefits charged to an account exceed contributions credited to the account, the account shall be considered as having a debit balance and a reserve ratio of "less than zero"; and

(e) "Computation date" is July 31~~[October 31]~~ of each calendar year prior to the effective date of new rates of contributions.

➔Section 5. KRS 341.272 is amended to read as follows:

- (1) Notwithstanding any section of this chapter to the contrary, on or after July 15, 1984, any new domestic corporation, or any foreign corporation authorized to do business in this state, or any foreign corporation active in conjunction with a domestic corporation in a joint venture, partnership or other legal entity engaged in the contract construction trades shall pay contributions equal to the maximum rate of contributions payable under the rate schedule in effect for any given calendar year as determined by KRS 341.270; and, such maximum rate of contributions shall remain in effect until the employer has employed persons in this state for not less

than twelve (12) consecutive calendar quarters ending as of June 30~~[September 30]~~ immediately preceding the computation date. Thereafter, such employer's contribution rate shall be determined in accordance with the provisions of subsection (4) of KRS 341.270.

- (2) On or after January 1, 1989, any new domestic or foreign proprietorship or partnership engaged in the contract construction trades shall be subject to the provisions of subsection (1) of this section.

➔Section 6. KRS 341.275 is amended to read as follows:

- (1) For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in Section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under Section 501(a) of such code.

For the purpose of this section, "cabinet" shall mean the Education and Workforce Development Cabinet and "secretary" shall mean the secretary of the Education and Workforce Development Cabinet.

- (2) Any nonprofit organization which, pursuant to KRS 341.070(4), is, or becomes, a subject employer shall pay contributions under the provisions of KRS 341.270, unless it elects, in accordance with this section, to pay to the cabinet for the fund an amount equal to the amount of regular benefits and of one-half (1/2) of the extended benefits paid to workers for weeks of unemployment that is attributable to service in the employ of the nonprofit organization, performed during the effective period of the election but only if the employer is the worker's most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for that employer in each of ten (10) weeks whether or not consecutive.

- (a) Any nonprofit organization which is, or becomes, a subject employer on July 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than the remainder of 1972 and the calendar year of 1973,

1 provided it files with the cabinet a written notice of its election within the
2 thirty (30) day period immediately following such date.

3 (b) Any nonprofit organization which becomes a subject employer after July 1,
4 1972, may elect to become liable for payments in lieu of contributions for a
5 period of not less than the period of subjectivity during the year in which such
6 subjectivity begins and the following calendar year by filing a written notice
7 of its election with the cabinet not later than thirty (30) days immediately
8 following the date of the determination of such subjectivity.

9 (c) Any nonprofit organization which makes an election in accordance with
10 paragraph (a) or paragraph (b) of this subsection will continue to be liable for
11 payments in lieu of contributions until it files with the secretary a written
12 notice terminating its election not later than thirty (30) days prior to the
13 beginning of the calendar year for which such termination shall first be
14 effective, except that liability for payments in lieu of contributions shall
15 continue thereafter with respect to wages paid prior to the effective date of
16 such termination.

17 (d) Any nonprofit organization which has been paying contributions under this
18 chapter for a period subsequent to July 1, 1972, may change to a reimbursable
19 basis by filing with the cabinet not later than thirty (30) days prior to the
20 beginning of any calendar year a written notice of election to become liable
21 for payments in lieu of contributions. Such election shall not be terminable by
22 such organization for that and the following year.

23 (e) The secretary may for good cause extend the period within which a notice of
24 election, or a notice of termination, must be filed and may permit an election
25 to be retroactive but not any earlier than with respect to benefits paid after
26 December 31, 1969.

27 (f) The secretary shall notify each nonprofit organization of any determination

1 which may be made of its status as an employer and of the effective date of
 2 any election which it makes and of any termination of such election. Such
 3 determinations shall be subject to appeal and review in accordance with the
 4 provisions of KRS 341.430(2).

5 (3) Payments in lieu of contributions shall be made in accordance with the provisions
 6 of this subsection.

7 (a) At the end of each calendar quarter or at the end of any other period as
 8 determined by the secretary, the cabinet shall bill each nonprofit organization
 9 (or group of such organizations) which has elected to make payments in lieu
 10 of contributions for an amount equal to the full amount of regular benefits
 11 plus one-half (1/2) of the amount of extended benefits paid during such
 12 quarter plus any prior period adjustments, which are attributable to service
 13 performed in covered employment in the employ of such organization plus
 14 interest on the total amount billed at the average rate of earnings in the
 15 unemployment insurance fund for the prior calendar year. All interest
 16 collected under this subsection shall be credited to the unemployment
 17 insurance fund.

18 (b) Payment of any bill rendered under paragraph (a) shall be made not later than
 19 thirty (30) days after such bill was mailed to the last known address of the
 20 nonprofit organization or was otherwise delivered to it, unless there has been
 21 an application for review in accordance with paragraph (d) of this subsection.

22 (c) Payments made by any nonprofit organization under the provisions of this
 23 subsection shall not be deducted or deductible, in whole or in part, from the
 24 remuneration of workers in the employ of the organization.

25 (d) The amount due specified in any bill from the secretary shall be conclusive on
 26 the organization unless, not later than fifteen (15) days after the bill was
 27 mailed to its last known address or otherwise delivered to it, the organization

1 files an appeal to the commission setting forth the grounds for such appeal.
 2 Proceedings on appeal to the commission from the amount of a bill rendered
 3 under this subsection shall be in accordance with the provisions of KRS
 4 341.430, and the decision of the commission shall be subject to review under
 5 the provisions of KRS 341.460(1).

6 (e) Past-due payments of amounts in lieu of contributions shall be subject to the
 7 same interest, penalties, collection service, and lien provisions that, pursuant
 8 to KRS 341.300 to 341.310, apply to past-due contributions.

9 (4) (a) The secretary may, in accordance with regulations prescribed by the cabinet,
 10 require any nonprofit organization that elects to become liable for payments in
 11 lieu of contributions to deposit with the cabinet, within thirty (30) days after
 12 the effective date of its election as a condition thereof, money equal to two
 13 percent (2%) of the organization's total wages paid for employment as defined
 14 in KRS 341.050(1)(e) for the four (4) calendar quarters immediately preceding
 15 the effective date of such election. If the nonprofit organization did not pay
 16 wages in each of such four (4) calendar quarters, the amount of the deposit
 17 shall be as determined by the secretary.

18 (b) Money deposited in accordance with this subsection shall be retained by the
 19 cabinet in an escrow account until all possible liability to the fund under the
 20 election is terminated, at which time it shall be returned to the organization,
 21 less any deductions as hereinafter provided. The cabinet may deduct from the
 22 money deposited under this subsection by a nonprofit organization to the
 23 extent necessary to satisfy any due and unpaid payments in lieu of
 24 contributions and any applicable interest and penalties provided for in
 25 subsection (3)(e) of this section. The secretary shall require the organization
 26 within thirty (30) days following any deduction from a money deposit under
 27 the provisions of this subsection to deposit sufficient additional money to

1 make whole the organization's deposit at the prior level. The secretary may, at
 2 any time, review the adequacy of the deposit made by any organization. If, as
 3 a result of such review, he determines that an adjustment is necessary, he shall
 4 require the organization to make additional deposit within thirty (30) days of
 5 written notice of his determination or shall return to it such portion of the
 6 deposit as he no longer considers necessary, whichever action is appropriate.

7 (c) If any nonprofit organization fails to make a deposit, or to increase or make
 8 whole the amount of a previously made deposit, as provided under this
 9 subsection, the secretary may terminate such organization's election to make
 10 payments in lieu of contributions and such termination shall continue for not
 11 less than the remainder of that calendar year and the following calendar year
 12 beginning with the quarter in which such termination becomes effective;
 13 provided, that the secretary may extend for good cause the applicable filing,
 14 deposit, or adjustment period by not more than sixty (60) days.

15 (5) If any nonprofit organization is delinquent in making payments in lieu of
 16 contributions as required under subsection (3) of this section, the secretary may
 17 terminate such organization's election to make payments in lieu of contributions as
 18 of the beginning of the next calendar year, and such termination shall be effective
 19 for that and the next calendar year.

20 (6) Notwithstanding any other section of this chapter, no employing unit electing to
 21 make payments in lieu of contributions under the provisions of this section shall be
 22 entitled to relief of benefit charges.

23 ➔Section 7. KRS 341.277 is amended to read as follows:

24 (1) Any governmental entity which, pursuant to KRS 341.070(3), is or becomes a
 25 subject employer shall pay contributions under the provisions of KRS 341.270,
 26 unless it elects, in accordance with this section, to pay the cabinet for the fund an
 27 amount equal to the amount of all regular benefits plus all extended benefits paid to

workers for compensable weeks of unemployment occurring on or after January 1, 1979, and for all regular benefits and one-half (1/2) of extended benefits paid to workers for compensable weeks of unemployment occurring prior to such date that is attributable to service performed in covered employment in the employ of such governmental entity during the effective period of such election but only if the employer is the worker's most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for that employer in each of ten (10) weeks whether or not consecutive.

(a) Any governmental entity, which is or becomes a subject employer, may elect to become liable for payment in lieu of contributions for a period of not less than the calendar year in which such subjectivity begins and for the following calendar year provided it files with the cabinet a written notice of its election within thirty (30) days immediately following the date of the determinations of such subjectivity; or

(b) Any governmental entity which has paid contributions under the provisions of KRS 341.270 may change to a reimbursable basis by filing with the cabinet a written notice of its election not later than thirty (30) days prior to the beginning of any calendar year to make payments in lieu of contributions for a period of not less than two (2) calendar years following the effective date of such election.

(c) Any governmental entity which elects to make payments in lieu of contributions, in accordance with paragraphs (a) or (b) of this subsection, shall continue to be liable for payments in lieu of contributions until it files with the secretary a written notice terminating its election not later than thirty (30) days prior to the beginning of the calendar year for which such termination shall become effective except that liability for payments in lieu of contributions

1 shall continue thereafter with respect to wages paid prior to the effective date
2 of such termination.

3 (d) The secretary may for good cause extend the period within which a notice of
4 election must be filed and may permit the effective date of such election to be
5 retroactive.

6 (e) The secretary shall notify each governmental entity of any determination made
7 as to its status as a subject employer, pursuant to KRS 341.070 and the
8 effective date of any election or termination made pursuant to this subsection
9 which determinations shall be subject to appeal and review in accordance with
10 the provisions of KRS 341.430(2).

11 (2) Payment in lieu of contributions shall be made in accordance with the provisions of
12 this subsection.

13 (a) At the end of each calendar quarter or at the end of any other period as
14 determined by the secretary, the cabinet shall bill each governmental entity
15 (or group of governmental entities) which has elected to make payments in
16 lieu of contributions an amount equal to all regular benefits and all extended
17 benefits paid during such quarter for compensable weeks occurring on or after
18 January 1, 1979, plus any prior period adjustments which are attributable to
19 service performed in covered employment in the employ of such
20 governmental entity plus interest on the total amount billed at the average
21 rate of earnings in the unemployment insurance fund for the prior calendar
22 year. All interest collected under this subsection shall be credited to the
23 unemployment insurance fund.

24 (b) Payment of any bill rendered under paragraph (a) shall be made not later than
25 thirty (30) days after such bill was mailed to the last known address of the
26 governmental entity or was otherwise delivered to it, unless there has been an
27 application for review in accordance with paragraph (d) of this subsection.

- 1 (c) Payments made by any governmental entity under the provisions of this
2 subsection shall not be deducted or deductible, in whole or in part, from the
3 remuneration of workers in the employ of the governmental entity.
- 4 (d) The amount due specified in any bill from the secretary shall be conclusive on
5 the governmental entity unless, not later than fifteen (15) days after the bill
6 was mailed to its last known address or otherwise delivered to it, the
7 governmental entity files an appeal to the commission, setting forth the
8 grounds for such appeal. Proceedings on appeal to the commission from the
9 amount of a bill rendered under this subsection shall be in accordance with the
10 provisions of KRS 341.430 and the decision of the commission shall be
11 subject to review under the provisions of KRS 341.460(1).
- 12 (e) Past-due payments of amounts in lieu of contributions shall be subject to the
13 same interest, penalties, and collection provisions that, pursuant to KRS
14 341.300, apply to past due contributions.
- 15 (3) (a) The secretary may, in accordance with regulations prescribed by the
16 commission, require any governmental entity that elects to become liable for
17 payments in lieu of contributions to deposit with the cabinet within thirty (30)
18 days after the effective date of its election as a condition thereof, money equal
19 to two percent (2%) of the governmental entity's total wages paid for
20 employment as defined in KRS 341.050(1)(d) for the four (4) calendar
21 quarters immediately preceding the effective date of such election. If the entity
22 did not pay wages in each of such four (4) quarters, the amount of deposit, if
23 required, shall be determined by the secretary.
- 24 (b) Provided, however, that the amount of money required to be deposited under
25 this paragraph shall not exceed the amount for which any contributing
26 employer would be liable if subject to the maximum contribution rate
27 applicable to the annual taxable payroll.

1 (c) Money deposited in accordance with this subsection shall be retained by the
2 cabinet in an escrow account until all possible liability to the fund under the
3 election is terminated, at which time it shall be returned to the governmental
4 entity, less any deductions as hereinafter provided. The cabinet may deduct
5 from the money deposited under this subsection by a governmental entity to
6 the extent necessary to satisfy any due and unpaid payments in lieu of
7 contributions and any applicable interest and penalties provided for in
8 paragraph (e) of subsection (3) of this section. The secretary shall require the
9 governmental entity within thirty (30) days following any deduction from a
10 money deposit under the provisions of this subsection to deposit sufficient
11 additional money to make whole the governmental entity's deposit at the prior
12 level. The secretary may, at any time, review the adequacy of the deposit made
13 by any governmental entity. If, as a result of such review, he determines that
14 an adjustment is necessary, he shall require the governmental entity to make
15 an additional deposit within thirty (30) days of written notice of his
16 determination or shall return to it such portion of the deposit as he no longer
17 considers necessary, whichever action is appropriate.

18 (d) If any governmental entity fails to make a deposit, or to increase or make
19 whole the amount of a previously made deposit, as provided under this
20 subsection, the secretary may terminate such governmental entity's election to
21 make payments in lieu of contributions and such termination shall continue
22 for not less than the remainder of that calendar year and the following
23 calendar year beginning with the quarter in which such termination becomes
24 effective; provided, that the secretary may extend for good cause the
25 applicable filing, deposit or adjustment period by not more than sixty (60)
26 days.

27 (4) If any governmental entity is delinquent in making payments in lieu of contributions

as required under subsection (3) of this section, the secretary may terminate such governmental entity's election to make payments in lieu of contributions as of the beginning of the next calendar year, and such termination shall be effective for that and the next calendar year.

- (5) Notwithstanding any other section of this chapter, no employing unit electing to make payments in lieu of contributions under the provisions of this section shall be entitled to relief of benefit charges.

→Section 8. KRS 341.350 is amended to read as follows:

An unemployed worker shall, except as provided in KRS 341.360 and 341.370, be eligible for benefits with respect to any week of unemployment only if:

- (1) He has made a claim for benefits;

- (2) *For an initial claim made on or after January 1, 2012, he has served a waiting period of one (1) week, during which he has not received benefits. The waiting week period shall be the first compensable week of an initial claim for benefits for which he is eligible and qualified to receive benefits under this chapter. A waiting week period shall be required for each benefit year, whether or not consecutive. No more than one (1) waiting week period shall be required in any benefit year. The waiting week shall become compensable once the remaining balance on the claim is equal to or less than the compensable amount for the waiting week;*

- (3) (a) He has registered for work with respect to such week in accordance with regulations prescribed by the secretary; and

- (b) He participates in reemployment services, such as job search assistance services, if pursuant to a profiling system established by the secretary, he has been determined to be likely to exhaust regular benefits unless:

1. The claimant has completed the services to which he is referred; or
2. There is justifiable cause for the claimant's failure to participate in the

1 services. For the purpose of this section, "justifiable cause" shall be
 2 interpreted to mean what a reasonable person would do in like
 3 circumstances;

4 ~~(4)~~~~(3)~~ He is physically and mentally able to work;

5 ~~(5)~~~~(4)~~ He is available for suitable work, and making such reasonable effort to obtain
 6 work as might be expected of a prudent person under like circumstances;

7 ~~(6)~~~~(5)~~ His base-period wages in that calendar quarter of his base period in which
 8 such wages were highest are equal to at least seven hundred fifty dollars (\$750), and
 9 his total base-period wages are not less than one and one-half (1-1/2) times the
 10 base-period wages paid to him in such quarter and he was paid base-period wages in
 11 the last six (6) months of his base period equal to at least eight (8) times his weekly
 12 benefit rate with a minimum of seven hundred fifty dollars (\$750) earned outside
 13 the high quarter;

14 ~~(7)~~~~(6)~~ An otherwise eligible worker shall not be denied benefits under subsection
 15 ~~(5)~~~~(4)~~ of this section or because of his failure to actively seek work, nor
 16 disqualified under paragraph (a) of subsection (1) of KRS 341.370 with respect to
 17 any week he is in training with the approval of the secretary.

18 ~~(8)~~~~(7)~~ Notwithstanding any other provisions of this chapter, no otherwise eligible
 19 worker shall be denied benefits for any week because he is in training approved
 20 under 19 U.S.C. sec. 2296 (Section 236(a)(1) of the Trade Act of 1974), nor shall
 21 such worker be denied benefits by reason of leaving work to enter such training
 22 provided such work is not suitable employment, or because of the application to any
 23 such week in training of provisions in this law (or any applicable federal
 24 unemployment compensation law) relating to availability for work, active search for
 25 work, or refusal to accept work. For purpose of this subsection, the term "suitable
 26 employment" shall mean employment of a substantially equal or higher skill level
 27 than the worker's past adversely affected employment as defined in 19 U.S.C. sec.

2319 (Trade Act of 1974), and wages for such work are not less than eighty percent (80%) of the workers' average weekly wage as determined for purposes of the Trade Act of 1974.

~~(9)~~~~(8)~~ The foregoing eligibility requirements and the conditions of benefit disqualifications imposed by KRS 341.370 shall be strictly construed. Nothing in this section, excepting subsection ~~(6)~~~~(5)~~, nor in KRS 341.360 or 341.370 shall affect the establishment of a "benefit year."

➔Section 9. KRS 341.380 is amended to read as follows:

(1) All benefits shall be paid through employment offices, or such other agencies as may be designated by regulations of the secretary. Claims for all payments of benefits shall be made in accordance with regulations of the secretary.

(2) The weekly benefit rate payable to an eligible worker for weeks of unemployment shall, except as provided in KRS 341.390, be an amount equal to one and three thousand seventy-eight ten-thousandths percent (1.3078%)~~[one and one hundred eighty-five one thousandths percent (1.185%)]~~ of his total base-period wages, except that no worker's weekly benefit amount shall be less than thirty-nine dollars (\$39), nor more than the maximum rate as determined in accordance with subsection (3) of this section. For claims effective on or after January 1, 2012~~[2001]~~, the weekly benefit rate shall, except as provided in KRS 341.390, be one and one thousand nine hundred twenty-three ten-thousandths percent (1.1923%)~~[one and three thousand seventy-eight ten-thousandths percent (1.3078%)]~~ of his total base-period wages, except that no worker's weekly benefit amount shall be less than thirty-nine dollars (\$39) nor more than the maximum rate as determined in accordance with subsection (3) of this section.

(3) Prior to the first day of July of each year the secretary shall determine the average weekly wage for insured employment by dividing the average monthly employment, as obtained by dividing the total monthly employment reported by subject

employers for the preceding calendar year by twelve (12), into the total wages reported by such employers for such calendar year and dividing by fifty-two (52). Fifty-five percent (55%) of the amount thus obtained, adjusted to the nearest multiple of one dollar (\$1), shall constitute the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July of such year and prior to the first day of July of the next following year; beginning in calendar year 1999, or any subsequent year in which the increase in the weekly benefit rate calculation set forth in subsection (2) of this section should take effect, sixty-two percent (62%) of the average weekly wage, adjusted to the nearest multiple of one dollar (\$1), shall constitute the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July of that year and prior to the first day of July of the next following year; except that for the benefit years beginning on or after July 1, 1982, if the "trust fund balance" as of September 30~~[December 31]~~ immediately preceding the benefit year is less than one hundred twenty million dollars (\$120,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate. If such "trust fund balance" as of September 30~~[December 31]~~ immediately preceding the benefit year:

- (a) Equals or exceeds one hundred twenty million dollars (\$120,000,000), but is less than two hundred million dollars (\$200,000,000)~~[one hundred fifty million dollars (\$150,000,000)]~~, the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than six percent (6%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1);
- (b) Equals or exceeds two hundred million dollars (\$200,000,000)~~[one hundred fifty million dollars (\$150,000,000)]~~, but is less than three hundred million dollars (\$300,000,000)~~[two hundred fifty million dollars (\$250,000,000)]~~, the

1 maximum weekly benefit rate shall not exceed the prior year's maximum
 2 weekly benefit rate by more than eight percent (8%). The rate thus determined
 3 shall be adjusted to the nearest multiple of one dollar (\$1);

4 (c) Equals or exceeds three hundred million dollars (\$300,000,000)~~[two hundred~~
 5 ~~fifty million dollars (\$250,000,000)]~~, but is less than four hundred million
 6 dollars (\$400,000,000)~~[two hundred seventy five million dollars~~
 7 ~~(\$275,000,000)]~~, the maximum weekly benefit rate shall not exceed the prior
 8 year's maximum weekly benefit rate by more than ten percent (10%). The rate
 9 thus determined shall be adjusted to the nearest multiple of one dollar (\$1);

10 (d) Equals or exceeds four hundred million dollars (\$400,000,000)~~[two hundred~~
 11 ~~seventy five million dollars (\$275,000,000)]~~, but is less than five hundred
 12 million dollars (\$500,000,000)~~[three hundred fifty million dollars~~
 13 ~~(\$350,000,000)]~~, the maximum weekly benefit rate shall not exceed the prior
 14 year's maximum weekly benefit rate by more than twelve percent (12%). The
 15 rate thus determined shall be adjusted to the nearest multiple of one dollar
 16 (\$1); and

17 (e) Equals or exceeds five hundred million dollars (\$500,000,000), the
 18 maximum weekly benefit rate shall not exceed the prior year's maximum
 19 weekly benefit rate by more than fifteen percent (15%). The rate thus
 20 determined shall be adjusted to the nearest multiple of one dollar (\$1); and

21 (f) Is such that it resulted in the establishment of an employer contribution rate
 22 schedule, as provided for in KRS 341.270, for the current calendar year which
 23 has a higher minimum rate than the schedule in effect for the immediately
 24 preceding calendar year, the maximum weekly benefit rate shall not exceed
 25 the prior year's maximum weekly benefit rate.

26 (4) The maximum amount of benefits payable to any worker within any benefit year
 27 shall be the amount equal to whichever is the lesser of:

- 1 (a) Twenty-six (26) times his weekly benefit rate; or
- 2 (b) One-third (1/3) of his base-period wages, except that no worker's maximum
- 3 amount shall be less than fifteen (15) times his weekly benefit rate. Such
- 4 maximum amount, if not a multiple of one dollar (\$1), shall be adjusted to the
- 5 nearest multiple of one dollar (\$1).

6 ➔Section 10. KRS 341.530 is amended to read as follows:

- 7 (1) The Office of Employment and Training, Department of Workforce Investment,
- 8 shall maintain a reserve account for each subject employer making contributions to
- 9 the fund and a reimbursing employer account for each subject employer making
- 10 payment in lieu of contributions, and shall, except as provided in KRS 341.590,
- 11 credit to such account the total amount of all contributions or benefit reimbursement
- 12 paid by the employer on his own behalf. Nothing in this section or elsewhere in this
- 13 chapter shall be construed to grant any employer or individual who is or was in his
- 14 employ prior claims or rights to the amounts paid by him into the fund.

- 15 (2) Except as provided in subsection (3) of this section, all regular benefits paid to an
- 16 eligible worker in accordance with KRS 341.380 plus the extended benefits paid in
- 17 accordance with KRS 341.700 to 341.740, subject to the provisions of paragraphs
- 18 (a) and (b) below, shall be charged against the reserve account or reimbursing
- 19 employer account of his most recent employer. No employer shall be deemed to be
- 20 the most recent employer unless the eligible worker to whom benefits are payable
- 21 shall have worked for such employer in each of ten (10) weeks whether or not
- 22 consecutive back to the beginning of the worker's base period.

- 23 (a) Subject employers, which are not governmental entities as defined in KRS
- 24 341.069, shall be charged one-half (1/2) of the extended benefits paid in
- 25 accordance with KRS 341.700 to 341.740; and

- 26 (b) Subject employers which are governmental entities, as defined in KRS
- 27 341.069, shall be charged for all extended benefits paid in accordance with

1 KRS 341.700 to 341.740 for compensable weeks occurring on or after January
2 1, 1979, and for one-half (1/2) of the extended benefits paid for compensable
3 weeks occurring prior to such date.

4 (3) Notwithstanding the provisions of subsection (2) of this section, benefits paid to an
5 eligible worker and chargeable to a contributing employer's reserve account under
6 such subsection shall be charged against the pooled account if such worker was
7 discharged by such employer for misconduct connected with his most recent work
8 for such employer, voluntarily left his most recent work with such employer without
9 good cause attributable to the employment, or the employer has continued to
10 provide part-time employment and wages, without interruption, to the same extent
11 that was provided from the date of hire, and the employer within a reasonable time,
12 as prescribed by regulation of the secretary, notifies the office, in writing, of the
13 alleged voluntary quitting, discharge for misconduct or continuing part-time
14 employment; provided, however, that no employer making payments to the fund in
15 lieu of contributions shall be relieved of charges by reason of this subsection.

16 (4) Each subject employer's reserve account or reimbursing account shall, unless
17 terminated as of the computation date (as defined in subsection (5) of KRS
18 341.270), be charged with all benefits paid to eligible workers which are chargeable
19 to such reserve account or reimbursing account under subsection (2) of this section.
20 A subject employer's reserve account or reimbursing account shall be deemed to be
21 terminated if he has ceased to be subject to this chapter, and his account has been
22 closed and any balance remaining therein has been transferred to the fund's pooled
23 account or to a successor's account as provided in KRS 341.540 or has been
24 refunded if the employer is a reimbursing employer.

25 (5) Notwithstanding subsection (1) of this section, two (2) or more nonprofit (Internal
26 Revenue Code sec. 501(c)(3)) organizations may jointly request the secretary to
27 establish a group reserve account or reimbursing account for such nonprofit

1 organizations. Two (2) or more governmental entities may jointly request the
 2 secretary to establish a group reserve account or reimbursing account, and once
 3 established, such account shall remain in effect at least two (2) calendar years and
 4 thereafter until either dissolved at the discretion of the secretary or upon filing
 5 application for dissolution by the group members. Each member of a group shall be
 6 jointly and severally liable for all payments due under this chapter from each or all
 7 of such group members. The secretary shall prescribe such procedures as he deems
 8 necessary for the establishment, maintenance, and dissolution of a group reserve
 9 account or reimbursing account.

- 10 (6) Any subject contributing employer may at any time on or before December 31,
 11 2011, make voluntary payments to the fund, additional to the contributions required
 12 under KRS 341.260 and 341.270. Effective January 1, 2012, any subject
 13 contributing employer with a negative reserve account balance may make
 14 voluntary payments to the fund every other calendar year, in addition to the
 15 contributions required under KRS 341.260 and 341.270. Notwithstanding any
 16 other provision of this chapter, contributions paid on or before the computation date
 17 and voluntary payments made within twenty (20) days following the mailing of
 18 notices of new rates shall be credited to an employer's reserve account as of the
 19 computation date, provided no voluntary payments shall be used in computing an
 20 employer's rate unless the payment is made prior to the expiration of one hundred
 21 and twenty (120) days after the beginning of the year for which the rate is effective.
 22 Voluntary payments~~[contributions]~~ by any employer~~[subject to a minimum rate as~~
 23 ~~provided in KRS 341.270(2) or KRS 341.272(1)]~~ shall not exceed any negative
 24 balance they may have in their reserve account as of the computation date. Any
 25 employer who is delinquent in the payment of contributions, penalties, or interest as
 26 of the computation date shall be entitled to make voluntary payments only after the
 27 amount of the delinquency is paid in full.

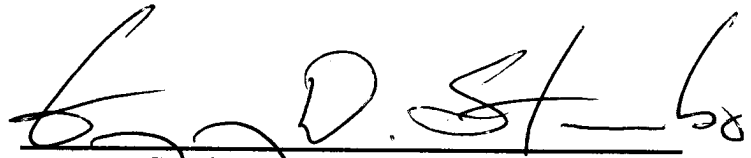
1 ➔Section 11. The Education and Workforce Development Cabinet, in
2 administering KRS Chapter 341, is encouraged to promulgate or amend administrative
3 regulations to implement the following on or before January 1, 2012:

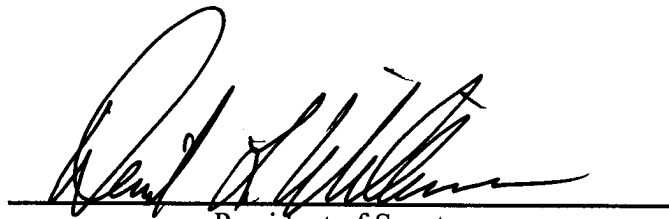
4 (1) Allow for the electronic notification of an employer regarding an unemployment
5 insurance claim;

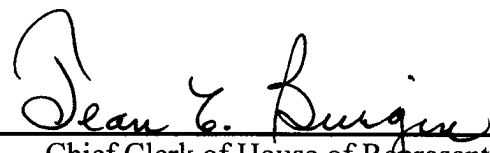
6 (2) Increase the employer protest period from ten to fifteen days after an unemployment
7 insurance claim is filed;

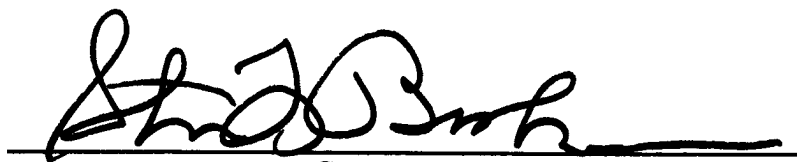
8 (3) Institute random audits of job search efforts provided by claimants; and

9 (4) Revise the unemployment insurance appeal process regarding the conduct of
10 hearings.


Speaker-House of Representatives


President of Senate

Attest: 
Chief Clerk of House of Representatives

Approved 
Governor

Date 